82-1625

NUMBER A863

SUPREME COURT OF THE

UNITED STATES OF

AMERICA

RALPH BOUMA and MRS. RALPH BOUMA

Petitioners

vs

LARRY C. IVERSON, INC.,

Respondent

ON PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE STATE OF MONTANA

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

VOLUME III

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APPENDIX G

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF PONDERA

* *

LARRY C. IVERSON, INC.,

Plaintiff

v

RALPH BOUMA, MRS. RALPH BOUMA, his wife, CENTRAL BANK OF MONTANA, a Montana Corporation, GREAT FALLS IRON WORKS, a Corporation, M. DEAN JELLISON, DOUGLAS L. PEACOCK, JACK M. PITZER, GREAT WESTERN BANK AND TRUST COMPANY, and Arizona banking corporation and successor in interest to Pioneer Bank of Arizona, JOE GLENN, LYNN BARTLETT, and TOM DOWLING

Defendants

CAUSE NO. 8509

MEMORANDUM IN LIEU OF TRANSCRIPT OF HEARING HELD SEPTEMBER 25, 1979

* *

The various motions pending in the above entitled matter came on for hearing before the Court at the courtroom of the Pondera County Courthouse at Conrad, Montana, commencing at 10:00 a.m. on the 25th day of September, 1979, The hearing was held pursuant to order of this Court dated July 19, 1970.

The persons present were as follows:

WARREN C. WENZ, attorney for the receiver

CRESAP McCRACKEN, attorney for the corporation and the receiver

RAY F. KOBY, attorney for the corporation and the receiver

RANDALL SWANBERG, attorney for the corporation and the receiver

GALE GUSTAFSON, attorney for Mrs. Ralph Bouma

RALPH BOUMA, appearing as attorney pro se

DALE L. KEIL, attorney for Mrs. Ralph Bouma

JAMES JOHNSON, attorney for the receiver

There was no testimony presented and no evidence adduced at the hearing. The hearing consisted of oral argument presented by counsel for the parties including RALPH BOUMA, attorney pro se, and dialogue between the Court and counsel and RALPH BOUMA, attorney pro se with respect to the legal and factual issues discussed during argument.

The argument was followed by various oral orders issued by the Court from the bench.

This Court cannot reproduce the oral arguments advanced by counsel or the dialogue between the Court and counsel. However the Court has

detailed notes relating to the oral orders issued from the bench and these are being set forth herein verbatim. The verbatim orders are set forth within quotation marks in subparagraph form.

All of the parties have previously been advised by copy of a letter dated October 9, 1979, addressed to MR.S SARAH M. ROWE, Clerk of the District Court, Pondera County, Conrad, Montana, that the stenographic notes taken by the Court Reporter, CERESE PARKER, at the September 25, 1979, hearing were stolen from her automobile. By reference, this letter together with the attachments thereto, is made a part of this Memorandum.

For the benefit of the defendants, RALPH BOUMA and MRS. RALPH BOUMA, the Court will now restate the last paragraph contained in the said letter dated October 9, 1979, which is as follows, to-wit:

"MR. GUSTAFSON is concerned about protecting his clients right to appeal. I'm certain the MR. BOUMA has the same concern. It is my contention that under these circumstance to oral orders made from the bench will not be considered dated September 24, 1979, but will bear the date that they are in fact filed with the Clerk of Court in written form"

Shortly, after the hearing commenced, the Court announced that it would hear oral argument with reference to the following issues:

"(1) The application of the plaintiff, GEORGE CAMPANELLA, as Receiver for use and benefit of LARRY C. IVERSON, INC., to withdraw as party plaintiff and to substitute LARRY C. IVERSON, INC. as the party plaintiff and application to substitute counsel representing the plaintiff.

"(2) Motion of the plaintiff for summary judgment.

"(3) The motion of the defendant, RALPH BOUMA, for summary judgment on BOUMA"S counterclaims against the plaintiff, (filed as Item 398)

"(4) The contention of BOUMA that his most recent request for admissions stand admitted.

"(5) Defendant BOUMA"S motion for summary judgment dated September 10, 1979."

First the Court heard oral argument with respect to the application of the plaintiff-receiver to withdraw as party plaintiff and to substitute as party plaintiff LARRY C. IVERSON, INC., and application to substitute attorneys to represent LARRY C. IVERSON, INC.

RALPH BOUMA, attorney pro se and attorneys for MRS. RALPH BOUMA,

argued that the application should be denied.

During the argument the Court asked BOUMA and counsel for MRS. RALPH BOUMA if they contended that they would be prejudiced if the application were granted or did they contend that the granting of the motion would change the nature of the cause of action against them.

Nothing in the responses to these questions indicated to the Court that said parties would be prejudiced or that the granting of the application would change the nature of the cause of action against them.

After listening to oral argument and being fully advised the Court then orally ruled from the bench as follows:

"This application has been made pursuant to Order dated February 8, 1978, in combined Civil No. 8221 and 8073 pending in the above entitled Court. The Court in this cause takes judicial notice

of the said Order dated February 8, 1978. The application to substitute LARRY. C. IVERSON, INC., as the sole party plaintiff is granted and IT IS ORDERED that the name GEORGE CAMPANELLA, as receiver for the use and benefit of LARRY C. IVERSLN, INC. be removed as party plaintiff to the above entitled cause and that henceforth the party plaintiff shall appear as 'LARRY C. IVERSON, INC., Plaintiff."

"For authority the Court relies on Rule 25(c) M.R.Civ.Proc., 59 AM Jur 2d 685 (Sec. 224-Parties and the annotation 135 ALR 325."

"IT IS FURTHER ORDERED that plaintiff's motion for substitution of counsel to represent the plaintiff, LARRY C. IVERSON, INC., be

and same is hereby granted."

Following the Order respecting Issue (1), the Court heard argument on Issue (2). Then the Court ruled from the bench as follows:

"Plaintiff in the above entitled action has moved the Court to enter summary judgment in favor of the plaintiff and against the defendants, RALPH BOUMA and MRS. RALPH BOUMA, declaring the contract described in plaintiff's complaint herein dated July 17, 1978, wherein LARRY C. IVERSON, INC. is the seller and RALPH BOUMA is the buyer, to be null, void and of no force of effect. The motion has come regularly to be heard by this Court on the 25th day of September, 1979. The Court has read the briefs of the parties in favor of the motion and opposing the motion

and has heard the oral argument of counsel. The Court, being fully advised, has determined that the motion should be granted.

"THEREFORE IT IS ORDERED, ADJUDGED AND DECREED:

(1) That the plaintiff's motion for summary judgment be, and it is hereby granted.

"The Court now states its reasons for the granting of the motion.

"The material facts upon which the Court relied and as to which there was no material issue, are contained in the affidavits filed herein by the respective parties, in the depositions, in all pleadings and documents filed in these proceedings and in court decrees and orders and findings of fact and conclusions of law supporting same entered in Pondera County consolidated

causes 8221, 8073 of which this Court may take judicial notice.

"The contract which by this judgment is declared null and void consists of a contract for deed and agreement, both dated July 17, 1968, and an agreement dated July 16, 1968, copies of which are annexed to the answer of MRS. RALPH BOUMA filed herein, as Exhibits A, B and C thereof.

"The corporate records reflect only two purported stockholders meetings prior to the execution of the BOUMA contract. One meeting was the organizational meeting of the corporation held at Dillon, Montana at the Andrus Hotel January 30, 1967. At neither meeting was there any consideration of a sale of the land covered by the BOUMA contract, to BOUMA. However the bylaws

indicating adoption and approval on July 13, 1964, contained the following provision:

> "The Board of directors shall have the power and general authority to sell, lease, morgage, exchange, or otherwise dispose of the whole or any part of the property and assets of every kind and description of the corporation, for property, or for the whole or part of the capital stock of any other corporation...'

"Chapter 9,Title 15, 1947, R.C.M., as amended comprised part of the former Montana Corporation Code, relating to the procedure of the sale of corporate property and was in effect with respect to LARRY C.IVERSON, INC., at the time of it's incorporation in 1964 through the time of the BOUMA contract dated July 1968.

"The Court finds that the rights of the stockholders of the corporation at the time of the BOUMA contract were violated in the context of a completely ultra vires transaction between BOUMA and usurpers of de facto control of LARRY C. IVERSON, INC.

"LARRY C. IVERSON, INC. was incorporated in 1964 by CARL O. IVERSON and with members of his family, to own a 4,520 acre wheat farm near Ledger, Montana, east of Conrad, Montana, which is the IVERSON farm which ultimately became the subject of the BOUMA contract here in dispute.

"GIL & IRENE KEIERLEBER also became shareholders conveying certain of their farm property to the company. Shares in the company were initially issued to the IVERSON family members and to the KEIERLEBERS. Both families became involved in financial

ventures in Arizona and Colorado, and their financial circumstances deteriorated following incorporation. Some of the Iverson and KEIERLEBER shares were pledged to Farmers State Bank to secure loans. Eventually the Bank acquired the pledged IVERSON shares and some and some of the KEIERLEBER shares by foreclosure. The remainder of the KEIERLEBER shares were acquired by the KEIERLEBER trustee in bankruptcy (STANLEY W. SWAINE) by virtue of the bankruptcy. United Bank of Pueblo became owner of certain of the IVERSON shares through Sheriff's sale on execution for satisfaction of judgment on debts arising in Colorado.

"In 1968, Farmers State Bank and STANLEY W. SWAINE commenced a stockholders derivative action against LARRY C. IVERSON, INC.

and persons controlling it (Cause No. 8073). In 1969, United Bank of Pueblo (the Arkenasa Valley Bank) commenced an action for similar relief and for corporate dissolution. Both actions were consolidated during the trial of Cause No. 8221, and concluded in 1971, with the exception of continuing jurisdiction to govern the receivership of the corporation. GEORGE CAMPANELLA originally appointed receiver pendente lite, was affirmed as receiver in the final judgment.

"The present action arose out of the court ordered efforts of receiver CAMPANELLA to recover the 4, 520 acre wheat farm at Ledger, Montana which is and was the principle asset of the corporation. Farmers State Bank, United Bank of Pueblo and

STANLEY W. SWAINE, as bankruptcy trustee for the KEIERLEBERS, have supported this endeavor as a means of restoring to their share ownership in the corporation, some actaul cash value.

"Findings No. 7,8 & 9 of the Decree in combined Cause No. 8221-8073 finds that Farmers State Bank of Conrad, United Bank of Pueblo, and STANLEY W. SWAINE, Trustee in bankruptcy of IRENE A. KEIER-LEBER and GILBERT F. KEIERLEBER became shareholders of LARRY C. IVERSON, INC. in 1966 and 1967 which was prior to the execution of the BOUMA contract in July 1968. These three shareholders acquired 717, 118 and 600 shares respectively of 1,875 outstanding shares, owning percentages of 38%, 6% and 32% for a total percentage ownership of 76% of the company at the time of the BOUMA contract.

"Under the provision of Chapter 9, Title 15, 1947 R.C.M. consent of 2/3rd's of the outstanding shares was necessary to effect a valid sale of the IVERSON land which was the only remaining significant corporate asset of appreciable value.

"In the absence of affirmative vote of Farmers State Bank of Conrad, or absence of affirmative vote of United Bank of Pueblo in combination with the vote of the trustee in bankruptcy would have prevented obtaining the necessary affirmative 2/3rd's vote to authorize the sale. In fact, none of the shareholders voted in favor of the sale, and, in fact, there was never a stockholders meeting to authorize the sale in the first place, and there was never opportunity to vote for or against the sale.

"The purported sale of the IVERSON farm was accomplished during a so-called directors' meeting at Phoenix, Arizona July 19, 1968. The participants in the directors' meeting were JOHN C. TREASWAY and J. MILTON KRULL who were held to be corporate usurpers who were ousted by the decree in combined Cuases No. 8221-8073. CARL IVERSON was also indicated as having participated in the board meeting, and MABEL IVERSON was indicated by the minutes as having been the secretary at the time. The decree in combined Cause 8221-8073 reveals that both the IVERSONS had long since ceased to be shareholders in the company. Under the corporate law in force at that time, its was necessary that a member of the board of directors be a stockholder.

"The purported directors' meeting held July 19, 1969, did not observe any of the statutory requirements set forth in Chapter 9 Title 15 of the Montana Corporation Code which was then in effect. No notice of stockholders was held; no provision was made for protection of the rights of dissenting stockholders, as the statutes require. No publication of notice or filing of the resolution authorizing sale was published in the only newspaper printed in Pondera County (The Independent-Observer). and there was no filing of the certificate of proceedings and resolution authorizing sale with the Pondera County clerk and Recorder.

"There was no Montana attorney used in connection with the trans-

action although an Arizona attorney was empoyed for the purpose of drafting papers. Thre was no title investigation which would have been normal in such a large transaction. The contract by its very terms, authorizes payment of 44% of the unpaid installment balance of the contract directly to the corporate usurpers, KRULL and TREADAWAY, instead of to the corporation as would be the normal transaction.

"The transaction on its face was suspect and bore the hallmarks of fraud.

"I previously mentioned th by-law provision authorizing the directors to sell the whole or any part of the assets of the coporation.

"The corporation record book is dated July 11, 1964, and the original organizational meeting was held August 19, 1964.

"Sections 15-908 and 15-909, 1947 R.C.M. which were then in effect require that such a by-law, in order to be effective, must be noticed and published in a newspaper printed in the county, and recorded in the office of the county clerk and recorder in the same fashion as specific authorization meetings for sale of substantially all of the corporation assets. The affidavits of publisher JACK LEE and Clerk and Recorder GLADYS MORENSON, both establish that no such notice was published, and no such filings were made in the Clerk and Recorder's Office.

"Thus the Court finds that the by-law provision authorizing the sale of corporate assets was invalid for failure to follow the statutory procedure.

"This was the holding in Hanrahan v, Anderson,108 Mont. 218,

90 P. 2d 494 (1939), where the Montana Court said:'* * * It is equally well settled in the absence of expressed statute, that in the case of a solvent corporation which has accumulated property for use in this business, neither the directors, nor even the stockholders except by unanimous vote, have the authority to dispose of such property except in the futherance and in the ordinary course of the business; for otherwise the authority is being used to defeat, to that extent, the very purpose for which the authority was given.'

"* * * The reason for the rule is that the purpose of a solvent corporation and its stockholders is not to be defeated in whole or in part by the directors, not even by the stockholders without unanimous consent, unless expressly provided

by law. * * * It was to relax the rule in the latter respect so as to prevent a small minority from thwarting the will of the overwhelming majority that the statute now appearing as Sec. 6004, supra (6004 later became Sec. 15-901 R.C.M. 1947) was enacted; and to make the relaxation of the law effective, its requirements must be essentially complied with. * * * The conveyance to Consolidated was a nullity, for the stockholders meetings purporting to authorize it were held on insufficient notice.'

"It would appear that there is another ground for finding that the BOUMA contract is void. I refer to the statement of the author appearing 19 AM Jur 2d 441 (Sec. 963, which is the article on Ultra Vires Transactions). The author says:

"It is also to be observed, by way of limitation of the

> doctrine of ultra vires, that an attempted conveyance by the officers of a corporation of its property without authority does not involve the doctrine of ultra vires, but of agents to act on behalf of their principle without authority.'

"The author gives as authority for this statement Hotaling v. Hotaling, 193 Cal. 368, 224 P. 455, 56 ALR 734.

"In Hotaling, the president's secretary assigned a deed of corporate property to a grantee. At that time the board of directors consisted of five members and under the by-laws and under state law a majority of the board of directors was necessary to conform a valid cop-orate act. At the meeting which the resolution for the sale of this property was adopted, there were only three directors

present and since one of the directors was the grantee named in the deed, he was disqualified from voting and this left only two directors and this did not constitute a majority of the board.

"The California Court held the deed to be void and said:

> "'It is suggested that the doctrine of ultra vires, as applied to the private corporation, and particularly as applied to a close corporation,as in the present case, should be confined without narrow bounds, this is not a question of ultra vires, but of agents assuming to act in behalf of the corporate principle in a matter in which they lack authority to bind the principle.'

"In this regard, the Court finds that defendant, RALPH BOUMA, knew or should have known that the purported officers who authorized the

the BOUMA contract in July 1968, did not have authority to authorize the sale. See the Answer and Counterclaim of defendant, RALPH BOUMA filed September 22, 1972 (Item 96). In his Seventh Defense Bouma says:

> "'This defendant admits that he knew there was litigation between LARRY C. IVERSON, INC. and Farmers State Bank of Conrad at the time he entered into the contract for deed ated July 17, 1968, with LARRY C. IVERSON, INC., such knowledge being the basis for the provision on said contract for deed, referred to in paragraph 2, Second Defense, with particular reference to the agreement therein, * * *.
>
> "'This defendant futher admits that it was futher made known to him that in Cause No. 8073, Farmers State Bank of Conrad

was challenging the authority of the officers of LARRY C. IVERSON, INC., to act as such. Therefore, this defendant hesitated to consumate the transaction with LARRY C. IVERSON, INC., until EARL M. BERTHELSON, president of the very Bank challenging the authority ofthe aforementioned officers * *.'

Following the foregoing Order and Opinion, the Court then announced from the bench:

"It appears that there's one other thing which must be handled before this case can be concluded and this is the adjusting of accounts betwen RALPH BOUMA and the plaintiff corporation.

"My first impression is that the ocrporation must restore to RALPH BOUMA everything of value which it received under the contract which ahs now been declared void and rescinded and that

RALPH BOUMA must do likewise. It would appear that this will involve an accounting which will have to be submitted and settled.

"The Court intends to recess for 10 minutes so that counsel for the plaintiff and MR. RALPH BOUMA can reflect on this problem. At the end of the 10 minute recess, we will return to court and counsel for the plaintiff and MR. BOUMA can each give me his view on how this should be handled.

"It might be that you would like to each research this issue and each of you submit his contentions on this issue together with citation of authority.

"It might be that this issue of settling accounts should be handled in the receivership action.

"At any rate the Court will be in recess of 10 minutes and at the end of that time each of you will present your suggestions concerning this matter."

Upon return from recess, the Court heard statements from respective counsel and then the Court made an oral ruling from the bench, which the Court cannot reproduce werbatim at this time. Therefore the Court now, at this later date, makes the following order:

IT IS ORDERED that on or before the 9th day of November, 1979, te plaintiff shall file with the Clerk of this Court and serve upon counsel for MRS. RALPH BOUMA and upon RLAPH BOUMA, counsel pro se, a proposed summary judgment to be entered by the Court in conformity with the orders and opinions set forth in this memorandum. Attorneys

for MRS. RALPH BOUMA and RLAPH BOUMA, attorney pro se, shall have five (5) days thereafter to file and serve their written objections to same. A copy of the proposed judgment and a copy of the objections shall be forwarded to the Judge by mail addressed as follows:

LEONARD H. LANGEN
Judge of the District Court
P.O. Box 1110
Glasgow, Mt. 59230

IT IS FURTHER ORDERED that counsel for the plaintiff shall also file and serve recommendations for method of adjusting accounts between plaintiff and defendants or plaintiff may, at its option, make provision for same in the proposed judgment. Counsel for plaintiff should also make recommendations for bringing this case to a final conclusion. All of the documents relating to the foregoing shall be filed with the Clerk of this Court on or before November 9, 1979,

and copies of all such documents shall be served upon defendants and copies mailed to the undersigned Judge at the addres in Glasow, Montana. Defendants shall have five (5) days thereafter within which to add their recommendations or within which to make their objections to plaintiff's proposals. Unless oral argument is specifically requested, all of these matters will be deemed submitted to the Court as of November 19, 1979, on the basis of written memorandum.

The Court then took up Issue (3), to-wit: BOUMA'S motion for summary judgment on his counterclaim against the plaintiff (Item 198)

The Court announced that it appeared that the issues presented by BOUMA;s counterclaims against the plaintiff should be resolved in the accounting between plaintiff and BOUMA.

At this time the Court cannot recall exactly how it ruled on Issues (4) and (5) and therefore at this time rules as follows:

Issue No. (4) and (5) became moot with the Court's ruling in favor of plaintiff and against the defendants, RALPH BOUMA and MRS. RALPH BOUMA with reference to plaintiff's motion for summary judgment.

However, so far as Issue (4) is concerned, it is noted that JUDGE THOMAS Made his order in the above entitled cause dated December 2, 1977, suspending further discovery.

So far as Issue (5) is concerned, it is noted that defendnats motion for summary judgment dated September 10, 1979, is a repetition of BOUMA'S motion was legally insufficient and redundant and briefs in support thereof contained matter which is redundant and scandalous in nature and introduces extraneous material.

Even though Issue (5) is moot, I adopt by reference the reasons given by JUDGE THOMAS in his order dated December 2, 1976, and ORDER that defendants' motion for summary judgment be and same is hereby denied.

During the hearing plaintiff filed its written motion pursuant to Rule 41 M.R.Civ.Proc. for the dismissal of the defendant, MRS. RALPH BOUMA for the reason that with the repeal of the Dower Statutes formerly applicable in the State of Montana that she no longer a real party in interest.

Oral argument was presented with respect to this motion and GALE R. GUSTAFSON and DALE L. KEIL, attorneys for MRS. RALPH BOUMA, each presented oral arguemnt in opposition to the motion.

RALPH BOUMA also made oral argument in opposition to the motion. Subsequently by document entitled "Withdrawal of Motion" dated

October 19, 1979, the plaintiff withdrew its previously filed Rule 41 motion directed toward the dismissal from the suit of the defendand, MRS. RALPH BOUMA and by Order dated October 23, 1979, the Court made its written Order that the motions to dismiss MRS. RALPH BOUMA will be disregarded.

DATED this 26th day of October, 1979.

Leonard H. Langen
Presiding Judge

APPENDIX H

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF PONDERA

* * * * * * * * * * * * * * * * * * * *

LARRY C. IVERSON, CIN.,

Plaintiff

vs

RALPH BOUMA, MRS. RALPH BOUMA et al.,

Defendants

CAUSE NO. 8509

ORDER

* *

An Affidavit for Disqualification for Cause having been filed by Defendant Ralph Bouma for the purpose of removing the Honorable Leonard Langen from presiding further in the above-captioned matter on January 25, 1982.

Thereafter, on February 4, 1982, the Chief Justice of the Montana Supreme Court appointed the undersigned District Judge to preside over and conduct the disqalification proceedings in Pondera County Cause No. 8509.

On February 9, 1982 a hearing was set to be conducted on Tuesday, February 23, 1982 for the purpose of determining the issue of disqualification of Honorable Leonard Langen, and attorneys of record were thereupon notified, as well as Judge Langen.

That on February 9, 1982, plaintiff filed its motion to strike the Bouma affidavit of January 25, 1982, with a Memorandum in Support.

That on February 22, 1982, Ralph Bouma filed a Memorandum in Support of his Affidavit of Disqualification.

That on said February 23, 1982, Ralph Bouma appeared personally

and as pro se counsel; that attorneys McCracken and Koby appeared on behalf of Plaintiff Iverson Inc.; that attorney Gustafson appeared on behalf of Mrs. Bouma; that Honorable Leonard Langen did not appear after notice; that Ralph Bouma presented evidence by way of witnesses and exhibits; and that arguments were presented by Ralph Bouma, and attorneys Gustafson and McCracken, and good cause showing; now, therefore;

IT IS HEREBY ORDERED:

1. Removal of Hon. Leonard Langen as presiding judge herein is denied, there being no sufficient showing of any personal bias or prejudice on the part of said judge against Defendant Ralph Bouma, as rulings by Judge Langen against the interests of the defendants were upheld by the Supreme Court of the State of Montana.

2. Plaintiff's motion to strike the Bouma affidavit of disqualification is granted.

3. No penalties shall be assessed against Ralph Bouma.

4. Honorable Leonard Langen is invited to proceed in this matter as required by law.

5. The Clerk shall transmit copies hereof to the Chief Justice of the Nontana Supreme Court, to Mr. Bouma, and to all counsel of record, and to the Honorable Leonard Langen.

DATED THIS 25th DAY OF FEBRUARY, 1982.

Mark R. Sullivan

District Judge Presiding
By order of the Chief Justice
of the Montana Surpeme Court

APPENDIX I

IN THE SUPREME COURT OF
THE STATE OF MONTANA

* * * * * * * * * * * * * * * * * * *

RALPH BOUMA and MRS. RALPH BOUMA)

Appellants) No. 82-81

vs) MOTION FOR DISQUALIFICATION

LARRY C. IVERSON) FOR CAUSE

Respondant)

* *

Ralph Bouma moves the justices of the Montana Supreme Court to disqualify themselves from hearing this appeal. The facts supporting the disqualfication are outlined in the affidavit.

The reason for disqualification besides those stated in the affidavit is that no justice should sit on a case when he rendered the judgment, Section 3-1-802 (3) M.C.A. The Affidavit states facts which show that the Montana Supreme Court was biased in rendering the Judgment in Iverson, Inc., vs. Bouma (Mt., 1981) 639 P.2d 47.

Ralph Bouma asks that the seven substitute justices be named by the Judicial Nominating Commission, Section 3-1-1001 et.seq. M.C.A. The purpose of this procedure is to avoid any appearance of impropriety.

Dated this 30th day of August, 1982.

/s/ Ralph Bouma

Ralph Bouma
Appellant and Attorney
Pro Se
P.O. Box 220, Choteau, Mt.

APPENDIX J

IN THE SUPREME COURT OF
THE STATE OF MONTANA
* * * * * * * * * * * * * * * * * *

RALPH BOUMA and MRS. RALPH BOUMA)

Appellants) NO. 82-81

vs)

LARRY C. IVERSON, INC.) AFFIDAVIT FOR DISQUALIFICATION

Respondent) FOR CAUSE
* *

State of Montana)
:ss
County of Teton)

I, Ralph Bouma, after being first duly sworn, depose and say:

1. This affidavit is made for the purpose of disqualification for cause of the seven justices of the Montana Supreme Court who enterred the order in Iverson vs. Bouma, Supreme Court Number 80-83 which

was heard on oral argument on September 15, 1981, for the reason that Affiant believes the he cannot have a fair and impartial hearing due totheir bias and prejudice against him in this case and because those justices would be sitting as judge of their own prejudice in their order, Iverson vs. Bouma (Mt. 1981) 639 P.2d 47.

2. On September 25, 1979, Judge Leonard Langen filed on public record an affidavit filed in camera (Docket Number 474) together with an application to impanel a grand jury (Docket Number 471-472) over the sremous objection of affiant and counsel for Mrs. Ralph Bouma on the basis that five of the justices of the Montana Supreme Court were named therein and that counsel for Larry C. Iverson, Inc., would use the same to emotionalize and prejudice the Montana Supreme Court making it impossible for affiant and his wife to have a fair appeal (Memorandum

in Lieu of Transcript, Docket Number 485, at 5, Transcript of February 23, 1982, Hearing at 171).

3. A few days prior to the September 15, 1981, oral argument in Iverson vs. Bouma, Supreme Court Number 80-83, Attorney Gale Gustafson (Counsel for Mrs. Ralph Bouma) received notice from the Commission on Practice of the State Bar of Montana that in the Fall of 1979 Chief Justice Frank Haswell had received a copy of the Bouma Afficait (Docket Number 474). He directed the Commission to make an investigation. This highly intimidated Gustafson at the September 15, 1981, oral argument before the Montana Supreme Court.

4. Two minutes prior to the oral arguemnt before the Montana Supreme Court Affiant and Gustafson were summoned into Chambers. They were notified that Affiant would not be allowed to address the Court

as Attorney Pro Se. They were told that Gustafson would be required to present argument for Affiant and Mrs. Ralph Bouma.

5. Affiant objected to this on the basis that Gustafson could not be effective counsel for Affiant. In addition, Affiant's constitutional and statutory right to represent himself was being violated.

6. At the conclusion of Gustafson's argument Justice Morrison asked, "Now, Mr. Gustafson, what has all this got to do with the issues before the Court?" This demonstrates that Gustafson did not effectively argue the legal issues of Affiant.

7. At the beginning of oral argument the counsel for Iverson, Inc., Ray Koby said, "One of them that was filed was an affidavit which was submitted to Judge Langen in order to encourage the Judge to impanel the grand jury to consider criminal proceedings against

various parties involved in the litigation... This affidavit is document 474 filed September 25, 1979. In this affidavit which is, I don't know, 30 pages long and its sworn to by Ralph Bouma under oath, there in paragraph 44, that I believe the Court ought to know about. ...In paragraph 44 starts out, and in furtherance of the conspiracy referred to above in Paragraph 9, herein, Wesley Castle, James C. Harrison, Frank I. Haswell, Gene E. Daley, and John Connley Harrison individually and as justices of the Montana Supreme Court under color of state law and or authority in concert with the parties referred to above in Paragraph 30 herein, and in strategy, publicly proclaimed by Cresap F. McCraken, willfully purposely and in bad faith reinterated in their April 5, 1974, Opinion of Montana Supreme Court Cause

12514, the comment Frank I. Haswell made at the March, 1974, hearing which reads as follows..."

8. Gustafson, on behalf of Ralph Bouma and Mrs. Ralph Bouma, objected to his argument saying that Koby was trying "to emotionalize the court and steer it from the issues at hand:

9. Koby concluded his argument by saying, "I have been advised by my co-counsel that I have extremely over-killed".

10. Cresap McCraken opened his arguemnt for Iverson, Inc., by saying, "Its very easy to get emotional and get carried away under the circumstances of this litigation." This shows that Counsel for Iverson, Inc., were working on emotions and not the facts or the law.

11. The attorneys for Iverson, Inc., were given a full hour to incense and emotionalize the Court on issues totally irrelevant to the

validity of the land contract. Affiant was without effective counsel because of the last minute substitution of counsel by the Supreme Court and was forbidden to address the Court at all.

12. Affiant filed a civil rights action alleging that the justices of the Supreme Court violated his civil rights. This was referred to in the Court's opinion in Iverson, Inc., vs. Bouma (Mt. 1981) 639 P.2d 47, 53. The justices so named should not preside in this case, Johnson vs. Mississippi (1971) 403 U.S. 212, 29 .Ed. 2d 423, 91 S. Ct. 1778.

13. This affidavit has been made in good faith.

Dated this 30th day of August, 1982.

/s/ Ralph Bouma

Ralph Bouma
Appellant and Attorney Pro Se
Box 220, Choteau, Mt.

Subscribed and sworn to before me this 30th day of August, 1982.

/s/ Jonnie Ruth Conatser

Notary Public for the State of Montana
Residing at: Choteau, Mt.
My Commission: 5.21.85

APPENDIX K

IN THE SUPREME COURT OF
THE STATE OF MONTANA
* * * * * * * * * * * * * * * * * * *

RALPH BOUMA and MRS. RALPH BOUMA,)
Appellants,) NO. 82-81
vs)
LARRY C. IVERSON,) ORDER
Respondent)
* *

PER CURIAM:

Ralph Bouma has filed herein a motion to disqualify the Justices of this Court, with the exception of Justice Shea, from further participation in this cause for the reasons set forth in his motion. The Court has examined, discussed and considered said motion.

IT IS ORDERED:

1. The motion of Ralph Bouma for disqualification for cause is denied for the reasons set forth in respondent's memorandum filed herein.

2. The Clerk is directed to mail a true copy hereof to Ralph Bouma personally, and to counsel for Mrs. Ralph Bouma and respondent Larry Iverson, Inc.

DATED this 9th day of September, 1982.

For the Court,

By. Frank Haswell
Chief Justice

APPENDIX L

IN THE SUPREME COURT OF THE
STATE OF MONTANA

* * * * * * * * * * * * * * * * * * * *

RALPH BOUMA and MRS. RALPH BOUMA)

Appellants)

vs)

LARRY C. IVERSON, INC.)

Respondent)

No. 82-81

PETITION FOR REHEARING PURSUANT TO RULE 34, MONTANA RULES OF APPELLATE CIVIL PROCEDURE

* *

Ralph Bouma, Pro Se, and Mrs. Ralph Bouma by her attorney, John Albrecht, petitions the Supreme Court of the State of Montana for a re-hearing of the Opinion and Order Dismissing Appeal filed On December 2, 1982. The reasons for the Re-hearing are:

1. Damages in the amount of $500.00 were awarded to Respondent Larry C. Iverson, Inc., pursuant to Rule 32. Larry C. Iverson, Inc., did not request such relief for this reason, Iverson waived any right to such relief.

2. Since Iverson did not request such relief, Boumas made no argument on the issue. They were effectively denied due process which includes notice and opportunity to be heard, Memphis Light, Gas and Water Division vs. Croft (1978) 436 U.S. 1, 16, 19.

3. Rule 32, M.R. App. C.P., allows damages on appeal to be awarded only if the appeal was taken for purposes of delay. No delay was caused by the Boumas taking this appeal.

4. Rule 32, M.R. App. C.P., allows damages on appeal only if the appeal is without substantial or reasonable grounds. One of the

grounds for appeal was the bias and prejudice of the trial court judge. Iverson filed a writ of supervisory control saying that issue could not be raised. The Supreme Court denied that writ. In doing so, the Supreme Court implicitly held that the bias and prejudice of the trial court judge could be raised.

5. The Montana Supreme Court held the Boumas' appeal to be "frivolous". Black's Law Dictionary, Revised 4th Edition (1968) defines a frivolous appeal as "one presenting no justiciable question and so readily recognizable as devoid of merit on face of record that there is little prospect that it can ever succeed." If this appeal was frivolous, then the Supreme Court should have granted Iverson's application for a writ of supervisory control.

6. Judge Leonard Langen's bias and prejudice was shown by the

following facts:

A. He was appointed by Judge R.D. McPhillips. The uncontroverted evidence showed that Judge McPhillips intended to appoint a judge unsympathetic to the Boumas (Transcript of the February 23, 1982, Hearing at 37-39).

B. Judge Langen summarily disposed of a number of the Bouma's defenses. (Transcript of February 23, 1982, Hearing at 64-65).

C. Judge Langen appeared prejudiced against the Boumas (Transcript of February 23, 1982 Hearing at 101, 105). The Supreme Court ignored unrefuted testimony by Mr. Murray (expert land appraiser for Iverson, Inc.) that he had never been in a court in 35 years where there was more bias on the part of the court that

there was toward the Boumas at the hearing held by Judge Langen on September 25, 1979 (Transcript of February 23, 1982 hearing at 105).

D. Judge Langen ordered an affidavit of Ralph Bouma filed. The affidavit accused five justices of the Supreme Court of crimes. Bouma asked that the affidavit not be filed to prevent the creation of bias and prejudice on the part of the Supreme Court. Judge Langen ruled he had no authority to impanel the grand jury yet ordered the affidavit filed (Memorandum in Lieu of Transcript of Hearing Relating to Application for Order Summoning a Grand Jury held in September 25, 1979, at 5, Transcript of February 23, 1982, Hearing at 170, 171).

E. Judge Langen summarily substituted a partially reconstituted

corporation for the Receiver.

F. Judge Langen acted as if he were counsel for one party (Transcript of February 23, 1982, Hearing at 85, 89 and Transcript of December 20, 1979 Hearing).

G. Judge Langen was the Defendant in a civil rights action brought by the Boumas.

7. The Montana Supreme Court's bias and prejudice was shown by the following facts:

A. The Montana Supreme Court refused to allow Ralph Bouma to argue his case yet allowed Iverson's attorneys the right to oral argument.

B. Five of the seven justices were named in a civil rights action

brought by the Boumas.

C. Five of the seven justices were named as possible defendants in an affidavit requesting the impaneling of a grand jury. This affidavit was used at oral argument by Iverson's attorney to induce and prejudice the Supreme Court's failure to consider numberous issues.

8. The Montana Supreme Court's order of December 2, 1982, is in direct conflict with Johnson vs. Mississippi (1971) 403, U.S. 212, 29 L. Ed. 2d 423, 91 S. Ct. 1778. In Johnson the United States Surpeme Court held that a State Court Judge may not hear the case of a party if the judge is a Defendant in a civil rights action brought by that party. In this case, both the Cupreme Court Justices were named and the Trial Court Judge was a Defendant in an action by the

Boumas.

CONCLUSION

For the above stated feasons, the Montana Supreme Court should:

1. Vacate the order awarding $500.00 damages on appeal.
2. Hear the appeal on its merits.
3. Reverse the summary judgment of the Trial Court and order a jury trial.

Dated this 10th day of December, 1982.

Ralph Bouma
Attorney Pro Se
P.O. Box 220
Choteau, Mt.

John Albrecht
Attorney for Mrs. Ralph Bouma

APPENDIX M

IN THE DISTRICT COURT OF THE
NINTH JUDICIAL DISTRICT OF
THE STATE OF MONTANA IN AND
FOR THE COUNTY OF PONDERA
* * * * * * * * * * * * * * * * * * * *

UNITED BANK OF PUEBLO (formerly
Arkansas Valley Bank), a Colorado
banking corporation,

Plaintiff

vs

LARRY C. IVERSON, INC., a Montana
corporation, CARL O. IVERSON, MABEL
IVERSON, LARRY C. IVERSON, M. DEAN
JELLISON, and FARMERS STATE BANK, a
Montana Banking Corporation,

Defendants

FARMERS STATE BANK OF CONRAD, a Montana banking corporation, and STANLEY M. SWAINE, Trustee of the estates of Gilbert F. Keierleber and Irene A. Keierleber, Bankrupts,

Plaintiffs

vs

LARRY C. IVERSON INC., a Montana corporation, et al,

Defendants

Nos. 8221 and 8073

RECEIVER'S STATEMENT TO THE COURT
(IN PART)

COMES NOW, George L. Campanella, Receiver in the above-entitled causes, and respectfully submits the following statement to the Court

pursuant to its Order dated December 2, 1977, and in support of his Administrative Petition herein dated December 1, 1977. He has petitioned for a court ordered abandonment of Civil Cause No. 8509 as an asset of Larry C. Iverson, Inc., for the following reasons:

1. IN THE OPINION OFTHE RECEIVER AND HIS COUNSEL THE PRIMARY EQUITABLE BASIS SUPPORTING THE SUIT IS PROBABLY NOT PROVABLE.

Apart from the first two counts of the Complaint in Civil Cause No. 8509 (which are grounded upon the voidness or voidability of the Contract for Deed because of corporate incapacity and/or improper authorization), the primary basis for the lawsuit was an inequitable disparity in the valuations of the two farms involved in the transaction resulting in an unjust enrichment of Mr. Bouma and other at the expense

of the corporate estate. Various counts of the Complaint sound in different areas of equity, however, all are bottomed upon the assumption that in the process of the corporation's selling farmland, taking another farm in on trade, and eventually selling the traded-in farm to certain relatives of Ralph Bouma, the farms were valued improperly such as to result in a loss to Larry C. Iverson, Inc. of well over $100,000.00 based upon true market values of the two farms. At the hearing of this court upon the petition of the stockhilders of Larry C. Iverson, Inc., asking the court to order the Receiver to file the suit in question, the stockholders made reference to a professional appraiser they had hired. His conclusions were represented to be that on July 17, 1968 (the date of the Bouma contract), the market value of the corporation's farm was $791,000.00, and the value of Bouma's trade-in farm (Agawam)

was $130,000.00, resulting in a market value difference of $661,000.00. The stockholders then made reference to the fact that the Bouma contract actually undervalued the Iverson farm at $735,000.00 and overvalued the Agawam or trade-in farm at $216,000.00, for a contract difference of $519,000.00. This resulted in a "loss" to Larry C. Iverson, Inc., of approxiamtely $142,000.00. Because of this stated fact, because of the findings of fact in the above-entitled actions regarding the persons found to have been in control of corporate affairs, and because of other representations to the court by the stockholders of much evidence of inequitable involvement by Ralph Bouma, the Receiver was ordered to file the lawsuit.

During the course of the lawsuit, the deposition of Mr. Hoover, the appraiser who had been hired by the stockholders, was taken by Mr.

Bouma and his counsel. As a result of that deposition, some degree of doubt was raised in the mind of the Receiver and his counsel regarding the ability of the appraiser and the validity of his work in this particular instance. These feelings were discussed with the attorneys for the stockholder bands who reluctant agreed that a new appraiser should be hired to fortify the results of the first one. As a result a Mr. Murray, MAI Appraiser, was hired and completed an appraisal of the two properties in July of 1976, appraising then however as of July 17, 1968. His opinion is that the corporation's farm at that time was worth $709,000.00 on the market and the trade-in Agawam farm was worth $199,000.00, for a net difference of $510,000. In other wor apparently in his opinion the corporation would have received a benefit of approximately $9,000.00 over actual market prices

under the Bouma contract.

In the meantime, in preparation for tial, Mr. Bouma hired the services of two independent appraisers, a Mr. McKay and a Mr. Hofland who concluded that the net difference to the corporation in market values of the two pieces of land were $447,000.00 and $502,000.00, respectively, both less than the contracted difference. A tabulation of the contract values and the appraised values by all appraisers is as follows:

1968 VALUES

	AGAWAM	IVERSON	DIFFERENCE
CONTRACT	$216,000.00	$735,000.00	$519,000.00
HOOVER	$130,000.00	$791,000.00	$661,000.00
MCKAY	$188,000.00	$635,000.00	$447,000.00

HOFLAND	$174,000.00	$676,000.00	$502,000.00
MURRAY	$199,000.00	$709,000.00	$510,000.00

Simply as an exercise, it is interesting to note that the actual average of all figures for the Agawam farm is $172,750.00, for the corporation's farm is $702,750.00, the average difference being $530,000.00. For each series of valuations, if the high value and the low value are excluded, the average of the remaining values for the Agawam farm is $187,000.00, for the corporation's farm is $706,666.00, and the difference would be $519,666.00, or nearly an identical figure to the actual contracted difference.

The Receiver is not contending that the contract valuations were correct nor that any given appraisal, with the exception of Mr. Hooever's, is good or bad. However, he and his counsel are of the opinion that it would be extremely hard to prove that the valuation

difference was actually enough higher than the contracted difference to be outside of the range of a normal sale which could have been bargained by any buyer and seller of similar property at the time of the contract. As such, the chances of proving appreciable damage to the corporation estate so as to move a court of equity would be slim. In other words, even assuming that Mr. Bouma could be proven to have very unclean hands, a court of equity may have a great deal of difficulty in taking the land away from him and adjusting accounts, or even re-forming the contract, if the corporation is not provably worse off because of his actions.

In fairness, the Receiver does acknowledge that such an opinion is a matter of professional legal judgment, and there does exist a certain degree of latitude for other attorney's opinions. In fact,

the opinions of the counsel for the stockholders of Larry C. Iverson Inc. do differ somewhat.

END OF EXCERPT

APPENDIX N

EXCERT FROM THE DISPOSITION OF
ROBERT KELLER
PRESIDING JUDGE

* * * * * * * * * * * *
FARMERS BANK OF PUEBLO

vs

IVERSON AND FARMERS STATE BANK
OF CONRAD

vs

IVERSON, CONSOLIDATED Cause Numbered 8221/8073
* * * * * * * * * * * *

9th Judicial District, State of Montana
Pondera County

Q I would like to direct your attention,Mr. Keller, to a statement in Defendants' Exhibit No. 53 and have you compare that with what is in the transcript.

(PAUSE TO COMPLY)

A Okay.

Q Do you have any place that you find in the transcript, the terminology which we see here at the early part of the instrument on the second page of Defendants' Exhibit No. 53, where it speaks of line 4?

A No

Q On page 1026, Volume 5, of the transcript, the record does not show what occurred? page 1026 starts as follows, and then it says:"Mr. Stevens," do you see that?

A Yes.

Q And then it goes on, it quotes what's in here, I believe?

A Yes.

Q "I have no further questions." That paragraph seems to be a quote directly from the transcript, doesn't it?

A Yes

Q Now, then, it says here, "Mr. Treadaway." Do you see that in there? It says, "Yes, Your Honor," so does that appear to be a quote from the transcript:

A Yes

Q Okay, now, then, it says in Paragraph 5, "The following occurred in open court, But was not recorded." Do you see that?

A Yes

Q Now, do you see that recorded in the transcript?

A No

Q Do you recall any statement to the effect that we see in the terminology of our Defendants' Exhibit No. 53, where it says: "The following occurred in open Court, but was not recorded," and it says: "Mr. Treadaway, how long do you thing it will take for the presentation of your defense?" Mr. Treadaway: Well, the plaintiff has taken 2½ weeks to present their case, and I anticipate that it will tkae us about the same length of time to put on our defense." "The Court: Mr. Treadaway, you may be sitting in this court for the next 2½ weeks, but I certainly am not going to be here; in fact, I have checked out of the

motel and I will be on my way to Kalispell at 5:00 o'clock this afternoon." Do you recall that incident happening in open court?

A No.

Q Would you deny that it did happen?

A In open court, in that manner?

Q Yes.

A Yes, There isn't any question taht the tenor of the discussion could have been held and it would certainly have been in jest. This is the third session we had had in Conrad for this thing, which means that I'm prepared to go over there for as long as I have to go, and I don't know what day that occurred, but whatever day it was, it was a time when they all anticipated that we would be done, and I'm booked, so it means coming back again. Nowhere did it come like

this. This comes out like they're cut off, and I submit to you that the part that is in the report in the record is the question of where are they going to go in their defenses, together or separately, and they intend to go the way they're going.

Q Whether, it was put on the record, or whether it was not put on the record, whether it was in jest or whether it was meant, do you deny that such terminology could have taken place at that interim?

A At that interim?

Q At the time when the plaintiff rested their case and we were looking to a defense:

A Yes, I'd deny that. The only time this could have occurred like that would have been at a break in chambers and a question of how much longer do we go and how we reschedule if we can't get done today.

Q Now, if other witnesses besides Krull and Treadaway were present--and also remember it as Mr. Treasway and Krull have put in their affidavit -- that they also remembered that, that it happened exactly that way, would it be your contention, then, that you flatly deny, or do you say that it is possible that it was misunderstood, or what is your explanation of that?

A Well, who else are you talking about?

Q Well, we'll say, for an example, if I could produce as many as ten witnesses that would say they remembered it exactly that way?

A Ten Witnesses?

Q If I could produce that may. I'm using a hypothetical.

A Well, that's what I'm trying to ask you. Who are you talking

about now is impeaching testimony, so I want to know who is it that says that I said that?

Q Okay, if I would tell you that Ralph Bouma was present and would testify that that happened, would you say that it's absolutely not true?

A Yes

Q If Ralph Bouma's parents were both present and would say that that happened, would you say it's not true?

A Yes

Q If Mr. Bill May was present and would say that it happened, would you say it's not true?

A Then I would re-examine my whole card.

Q What about Sandy McCracken, if he would say that he was present

and it happened, would you deny that it's true?

A Just as it says here?

Q Well, relatively the same, yes.

A Well, no, is this the way that they say it occurred? I said if something happened in jest, but it's not complete. Nothing about this transcript is consistent with this. The opening of it says, do you want to have it separately, or do you want to have it together? The close of it, when they're finally done, I'm surprised that they're done when they're done. The last page of the transcript indicates a surprise. I didn't think they would quit when they quit. The whole proceeding on this thing, starting back with the preceding summer, indicates that I have trudged back across that Divide in the worst weather again and again

and to say that this thing comes out that they're going to be limited and that's that, that's incredible, just simply incredible, so if anybody says that I said it in that manner, then I say they're wrong.

Q If it were off the record and was in jest, would it make it that it didn't happen?

A Oh, no, no it doesn't make it that it didn't happen, but it wouldn't be in the way it's set forth here.

Q But on the other hand, is it possible that this would have been reason why Krull and Treadaway may have made such a trememdously short defense, because they felt limited, or possibly took you seriously, if it was in jest:

A No

Q You don't feel that that caused them to shortcut their defense:

A I want to tell you that if I told them specifically they only have so much time to do something, there would be a record of an objection by Treadaway. I think there'd be one by Krull. It would be no different than if I told you that you're limited, and don't recall you sitting still for any limitations during the course of the trial.

Q But do you recognize that there are some things that we've been bringing out today all along, that when they got into an area and an objection was sustained, in every instance, they completely left the area and never did come back to it,

A Well, you've picked out the examples where they left, and that's true.

Q Now, those areas, along with this, would that not be an indication that they possibly felt limited and did't realize they weren't if, in fact, they weren't?

A No. I would be glad to go through the transcript, but I'm sure there are times when objections are sustained and they went right on with it. You've picked out places where they quit and didn't come back, but that doesn't mean that that's all the places. As I recall, it was John Treadaway who brought it up in jest, that it was going to take 2½ weeks, and that's what made the levity of the situation, but I don't recall that being an open court situation.

Q But do you recall that there was a topic, whether it was in open court, or where, do you recall faintly that something of this nature occurred?

A I really do, and I can recall John bringing it up, too, but with a big grin and everything else right with it, that if the plaintiff has taken 2½ weeks, they'll have 2½ weeks, and we all laughed, and then there was a response. I just don't -- it's possible at the end of a trial like this that you could have that kind of levity in the courtroom itself, but I find it more realistic to be in chambers rather than in open court.

END OF EXCERPT